Filed 6/15/15 Holdridge v. Superior Court CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ROBERT EDWARD HOLDRIDGE,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA CRUZ COUNTY,

Respondent,

THE PEOPLE,

Real Party in Interest.

H040393
(Santa Cruz County
Super. Ct. No. F19268)

I. INTRODUCTION

Defendant Robert Edward Holdridge filed a petition for writ of mandate after the trial court denied his motion to suppress evidence—specifically, the results of a blood draw conducted after his arrest on suspicion of driving under the influence (DUI). (See Pen. Code, § 1538.5.) Defendant contends the trial court erred by failing to suppress the results of a warrantless, nonconsensual blood draw, which was conducted prior to the United States Supreme Court decision in *Missouri v. McNeely* (2013) 569 U.S. __ [133 S.Ct. 1552] (*McNeely*).

As explained herein, we conclude that the warrantless blood draw in this case was conducted in objectively reasonable reliance on binding appellate precedent and that therefore, the trial court did not err by denying defendant's motion to suppress. We will deny the petition for writ of mandate.

II. BACKGROUND

A. Defendant's Arrest

At about 7:29 p.m. on May 22, 2010, defendant struck a bicyclist with his vehicle. Santa Cruz Police Officer Christopher Vigil contacted defendant, who displayed symptoms of being under the influence of alcohol. Officer Vigil conducted field sobriety tests and then two preliminary alcohol screening tests, which indicated defendant's blood alcohol level was 0.147 percent and 0.148 percent.

Defendant was arrested and informed that he had to "submit to a chemical sample." Officer Vigil asked defendant, "Do you want to do a breath sample or a blood sample?" Defendant replied, "I already did a breath sample." Officer Vigil said, "Okay. Then we will do blood." Defendant said, "No, no," and "I can do a breath sample again." Officer Vigil said, "We have to do blood," explaining, "DUI with an injury is a felony." Officer Vigil then took defendant to the hospital, arriving at 8:09 p.m. A blood draw was performed at 8:15 p.m.; defendant apparently complied with the blood draw. Defendant's blood alcohol level was 0.18 percent.

B. Trial Court Proceedings

On July 15, 2010, the District Attorney filed an information charging defendant with DUI causing injury (count 1; Veh. Code, § 23153, subd. (a)) and driving with a 0.08 percentage blood alcohol level causing injury (count 2; Veh. Code, § 23153, subd. (b)), with an allegation that defendant personally inflicted great bodily injury (Pen. Code, § 12022.7, subd. (a)). A first amended information was filed on July 12, 2012,

adding an allegation that defendant had a prior conviction of "wet reckless" (Veh. Code, §§ 23103, 23103.5).

On June 13, 2013, shortly after the *McNeely* decision was filed, defendant moved to suppress the evidence obtained via the blood draw. He argued that the warrantless blood draw violated the Fourth Amendment because he had not consented and there were no exigent circumstances.

The prosecution filed opposition, initially arguing that *McNeely* should not be applied retroactively, that the blood draw was consensual, and that exigent circumstances existed because defendant might have been only mildly intoxicated and because 45 minutes had passed between the incident and the blood draw. In supplemental points and authorities, the prosecution conceded that *McNeely* was retroactive but argued that under *Davis v. United States* (2011) 564 U.S. __ [131 S.Ct. 2419] (*Davis*), the exclusionary rule did not apply because the police acted in good faith reliance on binding appellate precedent. The prosecution asserted that California cases prior to *McNeely* had previously interpreted *Schmerber v. California* (1966) 384 U.S. 757 (*Schmerber*) as holding that the natural dissipation of alcohol, by itself, is a sufficient exigent circumstance justifying a warrantless blood draw following a DUI arrest.

In response, defendant argued that the *Davis* rule did not apply because *McNeely* had merely reaffirmed that *Schmerber* required a totality of the circumstances approach. Defendant argued that no California case had held that the natural dissipation of alcohol, by itself, is a sufficient exigent circumstance justifying a warrantless blood draw following a DUI arrest. He also reiterated that there were insufficient exigent circumstances to justify the blood draw in his case, particularly since he had agreed to take a breath test.

At a hearing on October 29, 2013, the trial court indicated it had read the parties' briefs and the relevant case law, and that it had reviewed the preliminary hearing transcript as well as a video of the exchange between Officer Vigil and defendant. The

court gave a tentative ruling: "The law at the time of the blood draw was that likely dissipation of alcohol concentration in the blood could be or may be an exigent circumstance, thereby not requiring a search warrant. [¶] . . . From the Court's perspective, as of the time of the blood draw, [the] officer acted appropriately and lawfully. . . . [¶] . . . I do believe that from the officer's perspective, there was reasonable reliance on the existing law." The court then adopted its tentative ruling.

C. Writ Proceedings

On November 25, 2013, defendant filed a petition for writ of mandate in this court and requested a stay of the trial court proceedings. On January 23, 2014, we ordered a temporary stay and requested preliminary opposition from the Attorney General. On December 1, 2014, we issued an order to show cause, continued the temporary stay, and directed the parties to address several questions relating to *McNeely* and California's implied consent law (see Veh. Code, § 23612, subd. (a)(1)(A)).

III. DISCUSSION

Defendant contends the trial court erred by failing to suppress the results of the warrantless blood draw. We will assume for purpose of argument that the blood draw was nonconsensual. We conclude that the trial court did not err, because the blood draw was conducted in objectively reasonable reliance on binding appellate precedent. (See *Davis, supra,* 564 U.S. at p. __ [131 S.Ct. 2419, 2423-2424].)

We begin by discussing the three relevant United States Supreme Court cases. In 1966, the court upheld a warrantless, nonconsensual blood draw following a DUI arrest in *Schmerber, supra*, 384 U.S. 757. The *Schmerber* court held that the Fourth Amendment's warrant requirement was excused because the arresting officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of

evidence,' " since "the percentage of alcohol in the blood begins to diminish shortly after drinking stops, as the body functions to eliminate it from the system." (*Id.* at p. 770.)

In 2013, the United States Supreme Court revisited *Schmerber* in *McNeely, supra,* 569 U.S. __ [133 S.Ct. 1552]. The *McNeely* court held that "the natural metabolization of alcohol in the bloodstream" does not present "a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." (*Id.* at p. 1556.) The *McNeely* court clarified that "consistent with general Fourth Amendment principles, . . . exigency in this context must be determined case by case based on the totality of the circumstances." (*Ibid.*)

In 2011, prior to *McNeely*, the United States Supreme Court held that "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule," even if that precedent is later overruled. (*Davis, supra,* 564 U.S. at p. __ [131 S.Ct. 2419, 2423-2424].) In *Davis*, the court considered whether suppression was the proper remedy for a search that "turned out to be unconstitutional" under *Arizona v. Gant* (2009) 556 U.S. 332 (*Gant*), but which was "in strict compliance" with the Eleventh Circuit's interpretation of *New York v. Belton* (1981) 453 U.S. 454, which had been limited by *Gant.* (*Davis, supra,* at p. __ [131 S.Ct. 2419, 2428].) The *Davis* court explained that under the circumstances, the policies behind the exclusionary rule did not apply. Specifically, there was no "police culpability," because the officers "did not violate Davis's Fourth Amendment rights deliberately, recklessly, or with gross negligence." (*Ibid.*)

Several recent published California appellate decisions have upheld warrantless blood draws conducted prior to *McNeely,* without requiring a showing of exigent circumstances, based on the *Davis* rule. (*People v. Harris* (2015) 234 Cal.App.4th 671, 703 (*Harris*); *People v. Jones* (2014) 231 Cal.App.4th 1257, 1265 (*Jones*); *People v. Rossetti* (2014) 230 Cal.App.4th 1070, 1076-1077 (*Rossetti*); *People v. Youn* (2014) 229 Cal.App.4th 571, 577 (*Youn*).) These cases explain that before *McNeely*, California cases

had " 'uniformly interpreted *Schmerber* to mean that no exigency beyond the natural evanescence of intoxicants in the bloodstream, present in every DUI case, was needed to establish an exception to the warrant requirement. [Citations.]' [Citation.]" (*Harris, supra,* at p. 702; see also *Jones, supra,* at p. 1265; *Rossetti, supra,* at pp. 1074-1075; *Youn, supra,* at p. 577.) Thus, the pre-*McNeely* warrantless, nonconsensual blood draws were conducted in objectively reasonable reliance on California courts' interpretation of *Schmerber.* (*Harris, supra,* at p. 702; *Jones, supra,* at p. 1265; *Rossetti, supra,* at pp. 1076-1077; *Youn, supra,* at p. 577.)

Defendant disagrees with the *Harris, Jones, Rossetti,* and *Youn* cases. He contends that the *Davis* rule is not applicable because, at the time of the search in his case, there was no binding California appellate precedent that specifically authorized a warrantless, nonconsensual blood draw following a DUI arrest without a showing of exigent circumstances. He contends that California cases only discussed the issue in non-binding dicta.

In 1972, just a few years after the *Schmerber* decision, the California Supreme Court addressed the question of whether *Schmerber* applies in the absence of a formal arrest. (*People v. Superior Court (Hawkins)* (1972) 6 Cal.3d 757 (*Hawkins*).) Citing *Schmerber,* the *Hawkins* court stated: "It is clear that the Fourth Amendment does not bar a compulsory seizure, without a warrant, of a person's blood for the purposes of a blood alcohol test to determine intoxication, provided that the taking of the sample is done in a medically approved manner, is incident to a lawful arrest, and is based upon the reasonable belief that the person is intoxicated. [Citations.]" (*Id.* at p. 761.) The *Hawkins* court further stated, "*Schmerber* recognizes that once the suspect is arrested, a seizure incident thereto may be properly conducted without a warrant, since the rapid dissipation of the alcohol would make the delay involved in obtaining a search warrant unnecessary and unjustifiable." (*Id.* at p. 765, fn. 7.)

Defendant argues that *Hawkins* is not binding authority for its interpretation of *Schmerber* because it "did not involve any type of holding based upon a theory of exigent circumstance." We disagree that *Hawkins* is merely dicta insofar as it interpreted *Schmerber* as authorizing a warrantless, nonconsensual blood draw in the absence of exigent circumstances "provided that the taking of the sample is done in a medically approved manner, is incident to a lawful arrest, and is based upon the reasonable belief that the person is intoxicated. [Citations.]" (*Hawkins, supra,* 6 Cal.3d. at p. 761.) *Hawkins's* interpretation of *Schmerber* was necessary to its holding that *Schmerber* did not apply to a warrantless, nonconsensual blood draw performed where there was *not* "a lawful arrest." (*Ibid.*)

Defendant also points out that the *Hawkins* court used the permissive word "may" when stating that, under *Schmerber*, a seizure incident to an arrest "may be properly conducted without a warrant, since the rapid dissipation of the alcohol would make the delay involved in obtaining a search warrant unnecessary and unjustifiable." (*Hawkins, supra,* 6 Cal.3d at p. 765, fn. 7.) Defendant argues that, by using the word "may," the *Hawkins* court recognized that *Schmerber* permitted a warrantless blood draw only if there were additional exigent circumstances. As the Attorney General points out, however, in context, when the *Hawkins* court stated that a blood draw "may be properly conducted without a warrant," it simply meant that an officer would be constitutionally authorized to conduct a warrantless blood draw. Further, earlier in the opinion, the *Hawkins* court referred unconditionally to "*Schmerber's* approval of the compulsory seizure of blood" when performed "incidental to a lawful arrest." (*Hawkins, supra,* at p. 761.) We do not read *Hawkins* as holding or suggesting that under *Schmerber*, the need for a warrantless blood draw is assessed under a totality of the circumstances test.

"After *Hawkins,* our Supreme Court and this state's intermediate appellate courts uniformly reiterated that a warrantless blood draw was justified under the Fourth Amendment if 'the arresting officer has reasonable cause to believe the arrestee is

intoxicated . . .' with alcohol [citation], and those courts did not require any additional showing of exigency to excuse the lack of a warrant. [Citations.]" (*Harris, supra,* 234 Cal.App.4th at p. 702; see *People v. Sugarman* (2002) 96 Cal.App.4th 210, 214; *People v. Ford* (1992) 4 Cal.App.4th 32, 35; *People v. Deltoro* (1989) 214 Cal.App.3d 1417, 1422 (*Deltoro*); see also *People v. Fiscalini* (1991) 228 Cal.App.3d 1639, 1642-1643; *People v. Trotman* (1989) 214 Cal.App.3d 430, 433-434 (*Trotman*); *Carleton v. Superior Court* (1985) 170 Cal.App.3d 1182, 1185 (*Carleton*).)

Defendant argues that the post-*Hawkins*, pre-*McNeeley* cases were also dicta, because none involved the specific issue of whether a warrantless blood draw can be conducted incident to a DUI arrest in the absence of exigent circumstances other than the rapid dissipation of alcohol from the bloodstream. However, that issue was raised in *Carleton, supra,* 170 Cal.App.3d 1182. In *Carleton,* the defendant argued that a warrantless blood draw could only be justified by emergency circumstances, in light of "technological advances" (such as telephonic warrants) since the *Hawkins* opinion. (*Id.* at p. 1185.) The *Carleton* court was "unpersuaded" by the argument, explaining, "*Hawkins* holds a search warrant is not required provided the defendant is under arrest, probable cause exists for taking the blood and the withdrawal is accomplished in a medically approved manner." (*Ibid.*) And related issues were raised in the other cases, which were generally based on the principle that *Schmerber* allowed a warrantless, nonconsensual blood draw where the defendant was validly arrested for DUI, or where there was probable cause for a DUI arrest, without a showing of exigent circumstances. (See, e.g., *Deltoro, supra,* 214 Cal.App.3d at p. 1425 [formal arrest unnecessary after Proposition 8]; *Trotman, supra,* 214 Cal.App.3d at pp. 437-438 [same].)

In sum, at the time of defendant's warrantless blood draw, California cases had consistently interpreted *Schmerber* as approving warrantless, nonconsensual blood draws incident to valid DUI arrests. Thus, the warrantless blood draw in this case was conducted in objectively reasonable reliance on binding appellate precedent, and there

was no "police culpability" justifying the application of the exclusionary rule.[1] (See *Davis, supra,* 564 U.S. at p. __ [131 S.Ct. 2419, 2428].) The trial court thus did not err by denying defendant's motion to suppress.

IV. DISPOSITION

The petition for writ of mandate is denied.

[1] Because we reach this conclusion, we need not determine whether the blood draw was independently justifiable as a consent search under the implied consent law, whether defendant actually consented to the blood draw, or whether defendant's willingness to take a breath test was a relevant exigent circumstance. We also need not address the Attorney General's claim that, if defendant's substantive argument is correct, his petition for writ of mandate was not timely filed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MÁRQUEZ, J.